COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

ABP BELLINGHAM LLC v. BOARD OF ASSESSORS OF THE TOWN OF BELLINGHAM

Docket Nos.: F320393 (FY 2013)
F332366 (FY 2014)

Promulgated:
June 21, 2017

These are appeals filed under the formal procedure, pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the Town of Bellingham ("appellee" or "assessors") to abate taxes on certain real estate in Bellingham, owned by and assessed to ABP Bellingham LLC ("appellant") under G.L. c. 59, §§ 11 and 38, for fiscal years 2013 and 2014 ("fiscal years at issue").

Commissioner Good heard these appeals. Chairman Hammond and Commissioners Scharaffa, Rose, and Chmielinski joined her in the Revised Decisions for the appellant, which are promulgated herewith.

These findings of fact and report are made pursuant a request by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

Kenneth W. Gurge, Esq. for the appellant.

Adam J. Costa, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

I. Introduction and Jurisdiction

On the basis of all the evidence, including the testimony and documentary exhibits entered into the record, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2012 and January 1, 2013, the relevant valuation and assessment dates for the fiscal years at issue, the appellant was the assessed owner of an approximately 90.70-acre parcel of land improved with two industrial-use buildings located at 419 Maple Street in Bellingham ("subject property"). The subject property is identified on the assessors' map 47 as lot 1.

For fiscal year 2013, the assessors valued the subject property at $16,702,200 and assessed a tax thereon, at the rate of $17.72 per thousand, in the total amount of $295,962.98. On December 31, 2012, Bellingham's Collector of Taxes ("Collector") mailed the town's actual real estate tax bills for fiscal year 2013. In accordance with G.L. c. 59, § 57C, the appellant timely paid the tax due without incurring interest. On January 30, 2013, in accordance with G.L. c. 59, § 59, the appellant timely filed an Application for Abatement with the assessors, which they denied on March 20, 2013. On June 19, 2013, in accordance with G.L. c. 59, §§ 64 and 65, the appellant seasonably filed an appeal with the Board.

For fiscal year 2014, the assessors valued the subject property at $17,019,000 and assessed a tax thereon, at the rate of $17.91 per thousand, in the total amount of $304,810.29. On December 31, 2013, the Collector mailed the town's actual real estate tax bills for fiscal year 2014. In accordance with G.L. c. 59, § 57C, the appellant timely paid the tax due without incurring interest. On January 30, 2014, in accordance with G.L. c. 59, § 59, the appellant timely filed an Application for Abatement with the assessors, which they denied on March 5, 2014. On June 5, 2014, in accordance with G.L. c. 59, §§ 64 and 65, the appellant seasonably filed an appeal with the Board.

On the basis of the preceding facts, the Board found and ruled that it had jurisdiction to hear and decide these appeals.

The subject property is located on Maple Street near the intersection of State Route 140. The subject property is also in close proximity to the interchange of Route 140 and Interstate 495. Land uses in the surrounding area include residential, retail, as well as industrial.

The subject property consists of an approximately 34.84-acre prime site ("prime site") and an approximately 55.86-acre parcel of excess land, which contains significant wetlands - 28.7 acres - which cannot be improved or used ("excess land").

The subject property has an irregular topography with some level areas but there are also steep slopes. It is subject to perpetual easements for the Charles River Watershed and also a 100-foot buffer around the wetlands portions.

The prime site is improved with two unheated warehouses, which are situated on the front and center sections of the lot. There is a security gate at the entrance of the prime site, and a chain link fence surrounds the improved area. There is a diesel fuel pump and a 10,000-gallon underground storage tank and also a 300,000-gallon water tank that serves the sprinkler system. The prime site has a rail spur located on the western edge of the buildings that traverses into and through the buildings; the rail spur is integral to the current owner's business.

Building #1, which was built in 1988, has a concrete slab foundation, steel frame, metal and poured concrete siding, and a ballasted rubber membrane roof. This building has a somewhat unusual layout because of the slope of the site. The building is 1.5 stories and contains 338,500 square feet, including 12,600 square feet of finished office area on two floors. The main-floor office area has a standard layout with private offices, open cubicle areas, a conference/training room, and a men's and a women's restroom. Below the main-floor office area, on the warehouse level, are additional offices, a break room, and additional restrooms. The building layout allows the main-floor office area to have a typical 10-foot ceiling and the warehouse to have a 34-foot ceiling height. There are twenty drive-in loading doors and also two rail-track doors.

Building #2, which was built in 1996, also has a concrete slab foundation, steel frame, metal siding, and a ballasted rubber membrane roof. This building, which contains 112,500 square feet, is an open warehouse with 28-foot ceilings, and a very small office/break room housed in a concrete block space within the building. There are no bathrooms. This building has three 20-foot-wide drive-in doors and two rail-track doors.

II. Appellant's Evidence

The appellant began the presentation of its case with the testimony of Gary Cummings, who is a Vice President of Real Estate, Corporate Services, and Environmental Affairs at Bluelinx Corporation ("Bluelinx"), which is the parent company of the appellant. Mr. Cummings explained that Bluelinx conducts business throughout the United States, and that it has significant industrial real estate holdings, totaling over 8 million square feet of space nationwide. Mr. Cummings testified regarding the current use of the subject property, as well as Bluelinx's acquisition of the subject property. He testified that Bluelinx purchased the subject property in 2004 for $7.2

million, and that the transaction was, in his opinion, an arm's-length transaction.

Mr. Cummings testified that following the economic crisis which began in 2008, Bluelinx's business declined precipitously, and it began trying to sell off some of its real estate holdings, including some of the subject property's excess land. He testified that, though they had a few inquiries from potential buyers, none of them resulted a sale, and they ultimately took it off the market. Mr. Cummings also described some of the attributes of the subject property that rendered it, in his opinion, "one of [Bluelinx's] most inefficient" properties from an operational standpoint. Those inefficiencies included the subject property's two-building layout, its lack of heating, and the limitations on expansion to or use of the excess land as a result of its topography and the significant amount of wetlands thereon. The Board found his testimony to be credible.

The appellant presented its case-in-chief primarily through the testimony and appraisal report of Susan R. Balogh, a certified real estate appraiser whom the Board qualified as an expert in commercial real estate valuation. After concluding that the subject property's highest-and-best use was its continued industrial use, Ms. Balogh determined that it was most appropriate to value separately the subject property's 35-acre prime site and the remaining 55 acres of vacant land. Ms. Balogh considered the three usual methods for estimating the value of the subject property for the fiscal years at issue. In her analysis, Ms. Balogh rejected the cost approach and valued the subject property using what she considered to be the more appropriate income-capitalization and sales-comparison methodologies. Ultimately, for the prime site, she relied most heavily on the values derived from her income-capitalization methodologies using the sales-comparison analyses as a check. For the excess land, she relied solely on the sales-comparison approach.

A. Prime Site

To determine what she considered to be the most appropriate rent to use in her income-capitalization methodologies, Ms. Balogh conducted a review of market rents for industrial-type buildings. For fiscal year 2013, she relied on five purportedly comparable industrial-use spaces that ranged in size from 80,000 square feet to 200,000 square feet with gross rental rates that ranged from $3.90 to $6.00 per square foot on a triple-net basis. She then made adjustments to account for location, size, condition, ceiling clearance, and percentage of office space, to arrive at adjusted rental rates that ranged from $2.93 to $3.75 per square foot on a triple-net basis.

Based on her analysis and also conversations with brokers in the market, Ms. Balogh selected an economic rent of $3.75 per square foot on a triple-net basis. Applying this rate to the subject property's net rentable area of 451,000 square feet, Ms. Balogh obtained a potential gross income of $1,691,250 for fiscal year 2013.

For fiscal year 2014, Ms. Balogh relied on five purportedly comparable industrial-use spaces that ranged in size from 134,648 square feet to 378,000 square feet with gross rental rates that ranged from $1.75 to $4.35 per square foot on a triple-net basis. She again made adjustments to account for location, size, condition, ceiling clearance, and percentage of office space, to arrive at adjusted rental rates that ranged from $1.73 to $3.92 per square foot on a triple-net basis. Based on her analysis, and also conversations with brokers in the area, Ms. Balogh selected an economic rent of $3.80 per square foot on a triple-net basis. Applying this rate to the subject property's net rentable area of 451,000, Ms. Balogh obtained a potential gross income of $1,713,800 for fiscal year 2014.

For vacancy and collection loss, Ms. Balogh relied on an analysis of vacancy rates in the industrial market in the region, which ranged from 13.6% to 18.2% for fiscal year 2013 and from 13.0% to 17.1% for fiscal year 2014. Based on the quality of the subject property and also the fact that it was owner occupied, Ms. Balogh concluded that vacancy rates of 16% for fiscal year 2013 and 15% for fiscal year 2014 were appropriate. Application of these rates resulted in effective gross incomes of $1,420,650 for fiscal year 2013 and $1,456,730 for fiscal year 2014.

Next, Ms. Balogh determined the subject property's net-operating income for each of the fiscal years at issue by deducting from the effective gross income the subject property's estimated operating expenses. Ms. Balogh noted that in net-leased buildings, most expenses are passed through to the tenant. She further testified that the expenses which the owner will incur include: management; capital reserves; and those operating expenses attributable to vacancy, including common area maintenance ("CAM") and tenant improvements. To determine her expense allowances, Ms. Balogh reviewed the subject property's actual expenses and also industry surveys, including *RealtyRates.com*, the *Institute of Real Estate Management*, and the *Price Waterhouse Coopers/Korpacz Real Estate Investor Survey*.

Ms. Balogh testified that management contracts for net-leased industrial properties generally range from 1% to 5% of effective gross income. For a single-occupant industrial building such as the subject property, she concluded that a management fee of 3% of effective gross income was appropriate for both fiscal years at issue. Ms. Balogh also testified that according to industry surveys, replacement reserves generally range from $0.22 to $0.60 per square foot. Given the condition and size of the subject property, she concluded that a rate of $0.25 per square foot was appropriate for both fiscal years at issue.

Ms. Balogh also allowed a deduction for typical operating expenses attributable to the building's vacancy for the fiscal years at issue, including property insurance, grounds maintenance, repairs & maintenance, and utilities. Based on industry standards and the national surveys she reviewed, Ms. Balogh concluded that operating expenses of $0.90 per square foot for fiscal year 2013 and $0.92 per square foot for fiscal year 2014 were appropriate. When applied to the vacancy rate of 16% for fiscal year 2013 and 15% for fiscal year 2014, Ms. Balogh calculated operating expenses of $64,944 and $62,103, respectively.[1]

Relying on industry publications and conversations with investors, Ms. Balogh determined that for the fiscal years at issue the average tenant non-renewal rate was 35%, which she applied to an average annual leasing commission of 6% of

[1] Using Ms. Balogh's underlying assumptions, the Board calculated her fiscal year 2014 operating expenses at $62,238.

potential gross income resulting in a leasing expense of $0.079 per square foot for fiscal year 2013 and $0.080 per square foot for fiscal year 2014. Lastly for expenses, she adopted a tenant-improvement allowance of $1.00 per square foot and applied it to the same non-renewal rate of 35%, resulting in a tenant-improvement deduction of $0.35 per square foot for both fiscal years at issue. After all deductions, Ms. Balogh calculated a net-operating income of $1,006,858 for fiscal year 2013 and $1,044,245 for fiscal year 2014.

Finally, Ms. Balogh determined a capitalization rate for each of the fiscal years at issue. Ms. Balogh developed her capitalization rates using a band-of-investment technique. For both fiscal years at issue, Ms. Balogh reported that she also consulted the relevant rates published by national surveys, such as *RealtyRates.com Investor Surveys* and *Price Waterhouse Coopers Real Estate Investor Surveys*.

For fiscal year 2013, Ms. Balogh assumed a mortgage-to-equity ratio of 70% to 30%, with a 7.369% interest rate and a 14.00% equity capitalization rate resulting in a capitalization rate of 8.50%. She then added a *pro rata* tax factor based on her vacancy rate to arrive at an overall capitalization rate of 8.7835% for fiscal year 2013. Applying the 8.7835% capitalization rate to the net-operating income of $1,006,858 resulted in an estimated value for the subject property of $11,463,061 for fiscal year 2013.

For fiscal year 2014, Ms. Balogh assumed a mortgage-to-equity ratio of 70% to 30%, with a 7.015% interest rate and a 14.00% equity capitalization rate resulting in a capitalization rate of 8.25%. She then added a *pro rata* tax factor based on her vacancy rate to arrive at an overall capitalization rate of 8.5187% for fiscal year 2014. Applying the 8.5187% capitalization rate to the $1,044,245 net-operating income resulted in an estimated value for the subject property of $12,258,267 for fiscal year 2014.

Ms. Balogh's income-capitalization analyses are reproduced in the following two tables.

Ms. Balogh's Income-Capitalization Methodology Fiscal Year 2013

INCOME			
Market Rent 451,000 square feet @ $3.75 psf			
Potential Gross Income ("PGI"):			$ 1,691,250
Vacancy & Collection Allowance (16%)			($ 270,600)
Effective Gross Income ("EGI")			$ 1,420,650
EXPENSES			
Management Fee	3% of EGI	$ 42,620	
Replacement Reserves	$0.25/sf	$112,750	
Vacancy Expenses			
Operating Expenses	$0.144/sf	$ 64,944	
Leasing Commissions	$0.079/sf	$ 35,629	
Tenant Improvements	$0.35/sf	$157,850	
Total Expenses:			($ 413,793)
Net Operating Income:			$ 1,006,858
Capitalization Rate		8.5000%	
Tax Factor		0.2835%	
Overall Capitalization Rate		**8.7835%**	
Indicated Value for Fiscal Year 2013			**$ 11,463,056**

Ms. Balogh's Income-Capitalization Methodology Fiscal Year 2014

INCOME			
Market Rent 451,000 square feet @ $3.80 psf			
Potential Gross Income ("PGI"):			**$ 1,713,800**
Vacancy & Collection Allowance (15%)			($ 257,070)
Effective Gross Income ("EGI")			**$ 1,456,730**
EXPENSES			
Management Fee	3% of EGI	$ 43,702	
Replacement Reserves	$0.25/sf	$112,750	
Vacancy Expenses			
Operating Expenses	$0.138/sf	$ 62,103[2]	
Leasing Commissions	$0.079/sf	$ 36,080	
Tenant Improvements	$0.35/sf	$157,850	
Total Expenses:			($ 412,485)
Net Operating Income:			**$ 1,044,245**
Capitalization Rate		8.2500%	
Tax Factor		0.2687%	
Overall Capitalization Rate		**8.5187%**	
Indicated Value for Fiscal Year 2014			**$ 12,258,272**

Ms. Balogh also used a sales-comparison methodology to estimate the fair cash value of the prime site for the fiscal year at issue to check on the values derived using her income-capitalization methodology. To begin her analysis, Ms. Balogh researched recent sales of industrial-type properties that were similar in size compared to the subject property. For fiscal year 2013, she selected five purportedly comparable properties that sold between January, 2010 and January, 2012, with sale prices that ranged from $3,725,000 to $20,600,000.

[2] As noted, *supra*, the Board detected a small mathematical error in Ms. Balogh's income-capitalization analysis, which had a negligible effect on the value derived.

Ms. Balogh then made adjustments to account for differences between the subject property and her purportedly comparable properties. She first made adjustments for conditions of sale where appropriate and then for various physical differences, including location, land-to-building ratio, size, percentage of air-conditioned office space, age/condition, loading capacity (i.e. number of docks), ceiling height, and lack of rail access.

After applying her adjustments, Ms. Balogh's purportedly comparable properties yielded values ranging from $15.99 to $40.70 per square foot with an average of $23.63 per square foot. Based on her analysis of the purportedly comparable properties, Ms. Balogh opined that the market value of the prime site, by using the sales-comparison approach, was $25.00 per square foot. At 451,000 square feet, Ms. Balogh calculated a market value for the prime site of $11,275,000 for fiscal year 2013.

For fiscal year 2014, Ms. Balogh again selected five purportedly comparable properties that sold between June, 2011 and December, 2012, with sale prices that ranged from $8,000,000 to $33,575,000. As in her analysis for fiscal year 2013, Ms. Balogh made adjustments to account for differences between the subject property and her purportedly comparable properties, including adjustments for conditions of sale, followed by adjustments for location, land-to-building ratio, size, percentage of air-conditioned office space, age/condition, loading capacity, ceiling height, and lack of rail access.

After applying these adjustments, Ms. Balogh's purportedly comparable properties yielded values ranging from $16.16 to $40.70 per square foot with an average adjusted price of $26.07 per square foot. Based on her analysis of the purportedly comparable properties, Ms. Balogh opined that the market value of the prime site, by using the sales-comparison approach, was $27.00 per square foot. At 451,000 square feet, Ms. Balogh calculated a market value for the prime site of $12,177,000 for fiscal year 2014.

B. Excess Land

To value the excess land, Ms. Balogh relied solely on the sales-comparison methodology for both fiscal years at issue. Specifically, she relied on five purportedly comparable vacant-land sales that occurred between October, 2007 and November, 2012. These properties ranged in size from 16.3 to 143.5 acres with sale prices that ranged from $4,808 to $36,102 per acre. In addition, Ms. Balogh cited a 32.0-acre vacant parcel of land that had a pending offer, as of the date of her appraisal report, of $399,900, or $12,497 per acre.

Ms. Balogh testified that while not comparable in all aspects, the subject property does share many characteristics with each of the sale properties. She then made adjustments for differences between the purportedly comparable properties and the subject property, first for conditions of sale, followed by adjustments for location, size, topography, and development potential. Ms. Balogh's analysis is reproduced in the following three-part table.

Ms. Balogh's Sales-Comparison Methodology – Excess Land

	Subject Property	Sale 1	Adj.	Sale 2	Adj.
	419 Maple St., Bellingham	Fiske St. (off), Holliston		Winthrop St., Taunton	
Sale Date		10/31/2007		8/28/2008	
Sale Price		$160,000		$125,000	
Acres		16.30		26.00	
Price per acre		$9,816		$4,808	
Condition of Sale		Abutter	-5%	Abutter	-5%
Adjusted Price per acre		**$9,325**		**$4,567**	
Location	Good	Average	5%	Good	0%
Acres	55.86	16.30	-10%	26.00	-5%
Topography	Varies	Generally level	-10%	Varies	0%
Development	Not likely	Similar	0%	Similar	0%
Adjusted Price per acre		**$7,926**		**$4,339**	

	Subject Property	Sale 3	Adj.	Sale 4	Adj.
	419 Maple St., Bellingham	1312 W. Central., Franklin		344 John Dietsch Blvd., North Attleboro	
Sale Date		6/30/2009		10/12/2010	
Sale Price		$600,000		$500,000	
Price per acre		$13,372		$24,131	
Condition of Sale		Abutter	-5%	Arm's Length	0%
Adjusted Price per acre		**$12,703**		**$24,131**	
Location	Good	Good	0%	Good	0%
Acres	55.86	44.87	-5%	20.72	-5%
Topography	Varies	Generally level	-10%	Generally level	-10%
Development	Not Likely	Similar	0%	Superior	-15%
Adjusted Price per acre		**$10,798**		**$16,892**	

	Subject Property	Sale 5	Adj.	Sale 6	Adj.
	419 Maple St., Bellingham	160 High St., Bellingham		0 Hixon St., Bellingham	
Sale Date		11/27/2012		Current offer	
Sale Price		$5,180,700		$399,900	
Price per acre		$36,102		$12,497	
Condition of Sale		Not Arm's Length	-10%	Arm's Length	-10%[3]
Adjusted Price per acre		$32,492		$11,247	
Location	Good	Good	0%	Good	0%
Acres	55.86	143.50	10%	32.00	-5%
Topography	Varies	Generally level	-10%	Rolling	0%
Development	Not likely	Superior	-30%	Similar	0%
Adjusted Price per acre		**$22,745**		**$10,685**	

After adjustments, Ms. Balogh's purportedly comparable vacant-land sales ranged from $4,339 to $22,745 per acre with an average adjusted price of $12,231 per acre. Based on an analysis of the market data presented, Ms. Balogh opined that the market value of the 55.86 acres excess land was $12,000 per acre, resulting in a total rounded value of $670,000. Furthermore, noting that land values are "sticky," meaning that they do not appreciate or depreciate rapidly over time, Ms. Balogh determined that this value was appropriate for both fiscal years at issue.

C. Final Value

To arrive at her final estimate of value for the subject property for the fiscal years at issue, Ms. Balogh added together the value that she derived for the prime site, using primarily the income-capitalization approach and the sales-comparison approach as a check, and the value she derived for

[3] Ms. Balogh suggested that a negative 10% adjustment is typical reduction between "asking" and selling price.

the excess land from the sales-comparison approach. Accordingly, Ms. Balogh concluded that the subject property's fair cash value for fiscal years 2013 and 2014 was $12,135,000 and $12,930,000, respectively.

III. Appellee's Evidence

In support of their assessment for the fiscal years at issue, the assessors relied on the testimony and appraisal report of Ellis B. Withington, whom the Board qualified as an expert in commercial real estate valuation. The assessors also offered into evidence the requisite jurisdictional documents. To develop a value for the subject property for the fiscal years at issue, Mr. Withington first examined the subject property's highest-and-best use and concluded that it was its current single-tenanted, warehouse use. Mr. Withington rejected both the cost and sales-comparison approaches and instead relied solely on the income-capitalization approach to estimate the fair cash value of the subject property for the fiscal years at issue.[4]

To determine what he considered to be an appropriate rent to use in his income-capitalization analysis for the fiscal years at issue, Mr. Withington relied on six industrial-use

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[4] Although Mr. Withington included in his appraisal report a sales-comparison analysis, he did not testify about this method, except to say that he did not rely on this methodology. The Board, therefore, gave no weight to Mr. Withington's sales-comparison approach or to the estimates of value obtained from it.

leases that ranged in size from 60,000 to 164,252 square feet with gross rental rates that ranged from $3.34 to $6.00 per square foot.[5] Mr. Withington then applied these lease rents to the respective buildings' total square footage to calculate a weighted average rental rate of $4.57 per square foot. Taking into consideration the location and physical characteristics of the subject property, Mr. Withington selected a market rent of $4.25 to use in his methodology. Applying this rate to the subject property's net rentable area of 451,000 square feet, Mr. Withington obtained a stabilized potential gross income of $1,916,750 for both fiscal years at issue.

For vacancy and collection loss, Mr. Withington testified that he relied on discussions with leasing agents in the subject property's market area, which indicated that vacancy rates for single-tenanted warehouse buildings ranged from 7% to 10% during the fiscal years at issue. Ultimately, Mr. Withington chose a vacancy rate of 10%, which resulted in an effective gross income of $1,725,075 for both fiscal years at issue.

Next, Ms. Withington determined the subject property's net-operating income for the fiscal years at issue by deducting from the effective gross income the subject property's estimated operating expenses. Mr. Withington testified that he based his

[5] Mr. Withington included in his analysis a rental space of 130,000 square feet with an "asking" rent of $4.25. He testified that the specific terms of the lease were not revealed, but that the base rent was "reported" to be in the range of $4.00 to $4.25 per square foot.

expenses on expense data obtained for similar-type properties located in the region. He limited his expenses to a management fee equal to 5% of the effective gross income, a common area maintenance expense of $40,900 calculated at $0.90 per square foot and attributable only to the 10% vacancy, and a replacement reserve allowance equal to 2% of effective gross income. After deductions, Mr. Withington determined a stabilized net-operating income of $1,563,420 for the fiscal years at issue.[6]

Finally, Mr. Withington developed his capitalization rate by reviewing national investor survey reports and performing mortgage-equity and also market-capitalization analyses. For his mortgage-equity analysis, Mr. Withington assumed a loan-to-value ratio of 70%, with an interest rate of 5.5% and a 12.0% equity yield rate, resulting in a capitalization rate of 7.9%. Additionally, Mr. Withington testified that the majority of larger single-tenant warehouse properties that sold in the past several years were typically purchased as owner occupied. Based on an analysis of these sales, Mr. Withington found that capitalization rates ranged from 8% to 9% for modern warehouses. Mr. Withington reconciled his analyses and settled on a capitalization rate of 8.75%. He then added a *pro-rata* tax factor based on his vacancy rate to arrive at an overall

[6] The Board noted a small mathematical error in Mr. Withington's calculation of the common area maintenance expense, which had a negligible effect on his net-operating income calculation.

capitalization rate of 8.867% for both fiscal years at issue. Applying the 8.867% capitalization rate to the net-operating income of $1,563,420 resulted in a stabilized estimated rounded value for the subject property of $17,500,000 for both fiscal years at issue.[7] He did not value the excess land separately.

Mr. Withington's income-capitalization analysis, as presented in his appraisal report, is reproduced in the following table.

Mr. Withington's Income-Capitalization Methodology Fiscal Years 2013-2014

INCOME			
Rental 451,000 square feet @ $4.25			
Potential Gross Income			**$1,916,750**
Vacancy - 10%			($ 191,675)
Effective Gross Income			**$1,725,075**
EXPENSES			
Operating			
Mgmt	@ 5% EGI	$86,254	
Common Area Main	@ $0.90 psf	$40,900	
Reserves	@ 2% EGI	$34,502	
Total Expenses			**($ 161,655)**
Net-Operating Income			**$1,563,420**
Capitalization Rate		8.750%	
Tax Factor		0.177%	
Overall Capitalization Rate		8.867%	
Indicated Value for Fiscal Years 2013 and 2014			**$17,631,893**
Rounded Value for Fiscal Years 2013 and 2014			**$17,500,000**

[7] The Board noted two flaws in Mr. Withington's capitalization rate; first, he used the fiscal year 2013 tax factor for both fiscal years at issue, and second, there was a mathematical error. However, both of these flaws had a negligible effect on his estimate of the subject property's indicated market value.

IV. Board's Findings

Based on all of the evidence, the Board found that the appellant met its burden of proving that the subject property was overvalued for the fiscal years at issue. The Board determined that the highest-and-best use of the subject property was its continued single-tenanted, industrial warehouse use. The Board also found that the income-capitalization methodology was the best approach to use to value the income-producing subject property for the fiscal years at issue.

With respect to fair market rent, the Board reviewed the comparable rents provided by both experts but placed the most weight on Ms. Balogh's comparable property located in Devens, which was 200,000 square feet with a rail spur and rented for $4.00 per square foot. The Board made a slight downward adjustment to account for the fact that rents ordinarily decrease as property size increases and, ultimately, selected a fair market rent of $3.90 per square foot for both fiscal years at issue.

With respect to vacancy and collection loss, the Board found that Ms. Balogh's vacancy rates of 16% and 15% for fiscal years 2013 and 2014, respectively, were too high in light of the fact that the subject property was best suited for a single tenant and Mr. Withington's vacancy rate better reflected that finding and the market. Therefore, the Board found that a vacancy rate of 10% was the more appropriate rate and was better supported by the record as a whole.

For operating expenses, the Board adopted Ms. Balogh's expenses, once adjusted to reflect the 10% vacancy rate, because they were more reasonable and supported by the record. The Board was swayed by her review of the subject property's actual expenses and analysis of industry standards.

As for the capitalization rates, the Board found that Ms. Balogh's pre-tax factor capitalization rates of 8.5% and 8.25% for fiscal years 2013 and 2014, respectively, best reflected the market data in evidence. Mr. Withington's suggested rate was only slightly higher. As a final step in the Board's determination of capitalization rates, the applicable pro-rated tax factor to account for vacancy for each of the fiscal years at issue was added to the base capitalization rates resulting in overall capitalization rates of 8.677% for fiscal year 2013 and 8.429% for fiscal year 2014.

Lastly, the Board agreed with Ms. Balogh that the excess land should be assigned some independent value and found her sales-comparison analysis to be well-founded and supported by market data. Accordingly, the Board adopted her opinion of value of $670,000 for both fiscal years.

The Board's valuation findings are summarized in the following two tables.

Board's Income-Capitalization Methodology Fiscal Year 2013

INCOME			
Industrial Space 451,000 square feet @ $3.90 psf			
Potential Gross Income ("PGI")			**$ 1,758.900**
Vacancy & Collection Allowance (10%)			($ 175,890)
Effective Gross Income ("EGI")			**$ 1,583,010**
EXPENSES			
Management Fee	3% of EGI	$ 47,490	
Replacement Reserves	$0.25/sf	$112,750	
Vacancy Expenses	$0.90/sf x 10%	$ 40,590	
Leasing Commissions	$0.079/sf	$ 35,629	
Tenant Improvements	$0.35/sf	$157,850	($ 394,309)
Total Expenses:			
Net Operating Income ("NOI")			**$ 1,188,701**
Divide by Total Capitalization Rate for Fiscal Year 2013:			
Capitalization Rate			8.500%
Tax Factor			0.177%
Total Capitalization Rate			8.677%
Indicated Value for Fiscal Year 2013			$13,699,447
Rounded Value for Fiscal Year 2013			**$13,700,000**
Excess Land	55.86 acres @ $12,000 per acre (rounded)		$670,000
Total Value for Fiscal Year 2013			**$14,370,000**

Board's Income-Capitalization Methodology Fiscal Year 2014

INCOME			
Industrial Space 451,000 square feet @ $3.90 psf			
Potential Gross Income ("PGI")			**$ 1,758.900**
Vacancy & Collection Allowance (10%)			($ 175,890)
Effective Gross Income ("EGI")			**$ 1,583,010**
EXPENSES			
Management Fee	3% of EGI	$ 47,490	
Replacement Reserves	$0.25/sf	$112,750	
Vacancy Expenses	$0.92/sf x 10%	$ 41,492	
Leasing Commissions	$0.079/sf	$ 35,629	
Tenant Improvements	$0.35/sf	$157,850	($ 395,211)
Total Expenses:			
Net Operating Income ("NOI")			**$ 1,187,799**
Divide by Total Capitalization Rate for Fiscal Year 2014:			
Capitalization Rate			8.250%
Tax Factor			0.179%
Total Capitalization Rate			8.429%
Indicated Value for Fiscal Year 2014			$14,091,814
Rounded Value for Fiscal Year 2014			**$14,090,000**
Excess Land 55.86 acres @ $12,000 per acre (rounded)			$670,000
Total Value for Fiscal Year 2014			**$14,760,000**

On this basis, the board found that the subject property was overvalued by $2,332,200 for fiscal year 2013 and $2,259,000 for fiscal year 2014 and therefore issued revised decisions for the appellant in these appeals ordering abatements in the amounts of $41,326.58 and $40,458.69.

OPINION

The assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Fair cash value is defined as the price on which a willing seller and a willing buyer in a free and open market will agree if both of them are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

The appellant has the burden of proving that the property has a lower value than that assessed. "'The burden of proof is upon the petitioner to make out its right as [a] matter of law to [an] abatement of the tax.'" ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974) (quoting ***Judson Freight Forwarding Co. v. Commonwealth***, 242 Mass. 47, 55 (1922)). "[T]he board is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayers . . . prov[e] the contrary.'" ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting ***Schlaiker***, 365 Mass. at 245).

In determining fair cash value, all uses to which the property was or could reasonably be adapted on the relevant assessment dates should be considered. ***Irving Saunders Trust v. Assessors of Boston***, 26 Mass. App. Ct. 838, 843 (1989). The goal is to ascertain the maximum value of the property for any legitimate and reasonable use. ***Id.*** If the property is particularly well-suited for a certain use that is not prohibited, then that use may be reflected in an estimate of its fair market value. ***Colonial Acres, Inc. v. North Reading***, 3 Mass. App. Ct. 384, 386 (1975). "In determining the property's highest and best use, consideration should be given to the purpose for which the property is adapted." ***Peterson v. Assessors of Boston***, Mass. ATB Findings of Fact and Reports 2002-573, 617 (citing APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 315-316 (12th ed., 2001)), *aff'd*, 62 Mass. App. Ct. 428 (2004). For the fiscal years at issue, the Board agreed with the parties' real estate valuation experts that the highest-and-best use of the subject property was its existing single-tenanted industrial-warehouse use.

Generally, real estate valuation experts, the Massachusetts courts, and this Board rely upon three approaches to determine the fair cash value of property: income capitalization, sales comparison, and cost reproduction. ***Correia v. New Bedford Redevelopment Authority***, 375 Mass. 360, 362 (1978). The use of the income-capitalization approach is appropriate when reliable market-sales data are not available. ***Assessors of Weymouth v. Tammy Brook Co.***, 368 Mass. 810, 811 (1975); ***Assessors of Lynnfield v. New England Oyster House***, 362 Mass. 696, 701-02 (1972); ***Assessors of Quincy v. Boston Consolidated Gas Co.***, 309 Mass. 60, 67 (1941). It is also recognized as an appropriate technique to use for valuing income-producing property. ***Taunton Redevelopment Associates v. Assessors of Taunton,*** 393 Mass. 293, 295 (1984). For the fiscal years at issue, the Board agreed with both parties' real estate valuation experts that the income-capitalization approach was the most appropriate method to value the prime site for the fiscal years at issue and also found that a sales-comparison analysis was the most appropriate methodology to value the excess land.

"The direct capitalization of income method analyzes the property's capacity to generate income over a one-year period and converts the capacity into an indication of fair cash value by capitalizing the income at a rate determined to be appropriate for the investment risk involved." ***Olympia & York State Street Co. v. Assessors of Boston,*** 428 Mass. 236, 239 (1998). "It is the net income that a property *should* be earning, not necessarily what it actually earns, that is the figure that should be capitalized." ***Peterson v. Assessors of Boston,*** 62 Mass. App. Ct. 428, 436 (2008) (emphasis in original). Accordingly, the income stream used in the income-capitalization method must reflect the property's earning capacity or economic rental value. ***Pepsi-Cola Bottling Co. v. Assessors of Boston,*** 397 Mass. 447, 451 (1986). Imputing rental income to the subject property based on fair market rentals from comparable properties is evidence of value if, once adjusted, they are indicative of the subject property's earning capacity.

See ***Correia v. New Bedford Redevelopment Auth.***, 5 Mass. App. Ct. 289, 293-94 (1977), *rev'd on other grounds,* 375 Mass. 360 (1978); ***Library Services, Inc. v. Malden Redevelopment Auth.***, 9 Mass. App. Ct. 877, 878 (1980)(rescript).

For the fiscal years at issue, the Board found that Ms. Balogh's suggested rental rates of $3.75 and $3.80 per square foot, respectively, were too low and Mr. Withington's were too high. Based on the evidence of market rents in the record, the Board made its own independent determination that a rate of $3.90 per square foot for both fiscal years at issue was the most appropriate rate. Next, the Board found that the record supported Mr. Withington's suggested vacancy allowance of 10%, which it found to be reasonable and appropriate for a single-tenanted warehouse property.

After accounting for vacancy and rent losses, the net-operating income is obtained by deducting the landlord's appropriate expenses. ***General Electric Co.***, 393 Mass. at 610. The expenses should also reflect the market. ***Id.***; *see* ***Olympia & York State Street Co.***, 428 Mass. at 239, 245. In the present appeals, the Board found that with minimal adjustments, Ms. Balogh's operating expenses were credible and market-based and, therefore, adopted them. The Board observed that Mr. Withington's expense category did not consider all relevant costs.

The capitalization rate should reflect the return on investment necessary to attract investment capital. ***Taunton Redevelopment Associates***, 393 Mass. at 295. Based on the evidence presented, the Board found that Ms. Balogh's pre-tax factor capitalization rates of 8.5% and 8.25% for fiscal years 2013 and 2014, respectively, were appropriate. To these base capitalization rates, the Board then added the applicable pro-rated tax factor to account for vacancy for each of the fiscal years at issue, resulting in overall capitalization rates of 8.677% for fiscal year 2013 and 8.429% for fiscal year 2014. A property's fair market value may be derived by capitalizing the net operating income at an appropriate rate. *See* ***Olympia & York State Street Co.***, 428 Mass. at 239.

"[S]ales of property usually furnish strong evidence of market value, provided they are arm's-length transactions and thus fairly represent what a buyer has been willing to pay for the property to a willing seller." ***Foxboro Associates v. Assessors of Foxborough***, 385 Mass. 679, 682 (1982). Sales of comparable realty in the same geographic area and within a reasonable time of the assessment date generally contain probative evidence for determining the value of the property at issue. ***Graham v. Assessors of West Tisbury***, Mass. ATB Findings of Fact and Reports 2007-321, 400 (citing ***McCabe v. Chelsea***, 265 Mass. 494, 496 (1929)), *aff'd* 73 Mass. App. Ct. 1107 (2008).

Properties are "comparable" when they share "fundamental similarities" with the subject property, including age, location and size. *See* ***Lattuca v. Robsham***, 442 Mass. 205, 216 (2004). The appellant bears the burden of "establishing the comparability of . . . properties [used for comparison] to the subject property." ***Silvestri v. Assessors of Lowell***, Mass. ATB Findings of Fact and Reports 2012-926, 935. *Accord* ***New Boston Garden Corp. v. Assessors of Boston***, 383 Mass. 456, 470 (1981). "[B]asic comparability is established upon considering the general character of the properties." ***Id.*** Once basic comparability is established, it is then necessary to make adjustments for the differences, looking primarily to the relative quality of the properties, to develop a market indicator of value." ***New Boston Garden Corp.***, 383 Mass. at 470. In the present appeals, the Board found that Ms. Balogh's sales-comparison analysis, including her adjustments, was well founded and supported by market data.

The Board is not required to believe the testimony of any particular witness or to adopt any particular method of valuation that an expert witness suggests. Rather, the Board can accept those portions of the evidence that the Board determines have more convincing weight, and form its own independent judgment of fair market value. ***Foxboro Associates***, 385 Mass. at 683 (1982); ***New Boston Garden Corp.***, 383 Mass. at

473; ***New England Oyster House, Inc.***, 362 Mass. at 701-702; ***General Electric Co.***, 393 Mass. at 605; ***North American Philips Lighting Corp. v. Assessors of Lynn***, 392 Mass. 296, 300 (1984). In evaluating the evidence before it in these appeals, the Board selected among the various elements of value and appropriately formed its own independent judgment of fair cash value. ***General Electric Co.***, 393 Mass. at 605; ***North American Philips Lighting Corp.***, 392 Mass. at 300. "The credibility of witnesses, the weight of the evidence, and inferences to be drawn from the evidence are matters for the Board. ***Cummington School of the Arts, Inc. v. Assessors of Cummington***, 373 Mass. 597, 605 (1977).

Based on the foregoing, the Board found and ruled that the subject property was overvalued for both fiscal years at issue and therefore issued Revised Decisions for the appellant, which the Board promulgated herewith.

THE APPELLATE TAX BOARD

By: ______________________________
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: ______________________________
Clerk of the Board
Asst.